

WISCONSIN SUPREME COURT CALENDAR

March 1, 2001

1:45 p.m.

99-3095

State v. Kelsey C.R.

This is a review of a decision from the Wisconsin Court of Appeals, District I, which affirmed a ruling of the Milwaukee County Circuit Court, Judge M. Joseph Donald presiding.

In this case, the Wisconsin Supreme Court will decide whether a police officer can frisk an individual for weapons as a general precaution.

Here is the background: At about 7:40 p.m. on March 1, 1990, City of Milwaukee Police Officer Bernard Gonzalez and his partner noticed a “female juvenile” (Kelsey C.R., who was 15), sitting on the sidewalk on Eighth and Mitchell Street in downtown Milwaukee. Gonzalez stopped the squad car, rolled down the window, and asked Kelsey some questions to check on her welfare. She assured him that she was fine and that she was waiting for a friend. Gonzalez asked her to “stay put” while he turned his squad car around, but Kelsey got up and ran away. After a short chase, they caught up to her and asked her why she ran. She responded that she was scared, and asked them why they were “bothering” her. The officers checked her identification, determined she was not a runaway, and then called her mother, who asked Gonzalez to bring the girl home. He testified that he would have brought her home regardless of whether the mother had asked him to.

Gonzalez then called for a female police officer to search Kelsey before he drove her home. He testified in the trial court that he would not put anyone in his squad car without making certain the person was not armed. The female officer patted Kelsey down, felt a hard object in her jeans, and asked her to remove it. It was a small caliber, loaded handgun. Kelsey was then charged with possession of a handgun by a minor.

In the trial court, Kelsey moved to suppress the evidence, arguing that there was no reasonable basis for the stop or the search. She argued that the officer’s instruction to “stay put” constituted an illegal stop and the search—because the officers had no specific reason to suspect that she was armed—was illegal as well. The judge declined to suppress the evidence, finding that the officers had a valid reason to stop Kelsey because they suspected that she could be a runaway and she was alone in a dangerous neighborhood after dark. As to the search, the judge found that the officer “was just essentially doing good police work in concern for his safety.”

Kelsey appealed, and the Court of Appeals affirmed, finding that the stop was based on the police “community caretaker function.” The Court of Appeals also found that the pat-down search was proper because it was routine procedure and was prudent:

Our society is awash with legal guns; the minimal intrusion of an outer clothing frisk of someone about to ride in the back of a squad car is more than outweighed by the need to ensure the officer’s safety.

The Supreme Court will decide whether the stop and search were legal.